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PATENT APPLICATION

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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): John Dimitroff

Confirmation No.: 8132

Application No.: 10/748,346

Examiner: Nguyen, Phuoc H.

Filing Date: 12/29/2003

Group Art Unit: 2143

Title: System and Method for Managing Data Flow and Measuring Service in a Storage Network

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 12/19/2007.

☒ The fee for filing this Appeal Brief is \$510.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month
\$120

☐ 2nd Month
\$460

☐ 3rd Month
\$1050

☐ 4th Month
\$1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

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By 

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)	
)	
John Dimitroff)	Group Art Unit: 2143
)	
Serial No.: 10/748,346)	Examiner: Nguyen, Phuoc H.
)	
Filing Date: 12/29/2003)	Confirmation No.: 8132
)	
For: System and Method for Managing Data Flow and Measuring Service in a Storage Network		

APPEAL BRIEF

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in response to the final rejections of the claims mailed October 22, 2007. A Notice of Appeal was filed on December 19, 2007.

REAL PARTY IN INTEREST

The assignee of the entire right, title, and interest in the patent application is Hewlett-Packard Development Company.

RELATED APPEALS AND INTERFERENCES

There are currently no related appeals of other United States patent applications known to Appellants, Appellants' legal representative, or the assignee that will directly affect, or be directly affected by, or have a bearing on, the Board's decision. There are currently no related interferences known to Appellants, Appellants' legal representative, or the assignee which will directly affect, or be directly affected by, or have a bearing on, the Board's decision.

STATUS OF CLAIMS

Claims 11-21 are pending in this application. Following the final Office Action mailed October 22, 2007, the status of the claims is as follows:

Claims 1-10 are canceled.

Claim 11 stands rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,151,624 to Teare, et al., ("Teare").

Claims 12-15 and 20-21 stand rejected under 35 U.S.C. §103(a) as being obvious over Teare in view of U.S. Patent No. 6,460,082 to Lumelsky, et al. ("Lumelsky").

Claims 16-19 stand rejected under 35 U.S.C. §103(a) as being obvious over Teare in view of U.S. Patent Publication No. 2005/0160154 to Raciborski, et al. ("Raciborski").

Claims 22-29 are canceled.

Claims 11-21 are subject to appeal.

STATUS OF AMENDMENTS

No Amendments have been filed since the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of the independent claims is summarized below with reference numerals and reference to the specification and drawings in accordance with 37 CFR §41.37.

Claim 11

The subject matter recited in claim 11 is directed to a computer system for operation in a network. In one embodiment, the system comprises a storage system, a network interface, and a processor. An exemplary system is described with reference to Fig. 1, at page 7, line 7 through page 8, line 8. The system contains a local copy of a portion of a distributed metadata registry (Fig. 2, reference numeral 204, page 8, lines 9-24), and an agent (Fig. 2A, reference numeral 246, page 8, line 25 through page 9, line 4) for monitoring communications between machines of the computer network and the computer system for communications relevant to a command object (Fig. 4; reference numeral 400, page 9, line 12 through page 12, line 15) of the metadata registry. The agent is configured to modify the command object by adding thereto network address information of machines of the computer network that should participate in a communication affecting the metadata registry to maintain coherency of the metadata registry. (Figs. 5A-5G, reference numeral 246, page 13, line 8 through page 16, line 20).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claim 11 is properly rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,151,624 to Teare, et al., (“Teare”).
2. Whether claims 16-19 are properly rejected under 35 U.S.C. §103(a) as being obvious over Teare in view of U.S. Patent Publication No. 2005/0160154 to Raciborski, et al. (“Raciborski”).

ARGUMENT

I. Rejections Under 35 U.S.C. §102

A. Legal Standard for Anticipation

The standard for lack of novelty, that is, for anticipation, under 35 U.S.C. §102 is one of *strict identity*. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). Invalidity for anticipation requires that all of the elements and limitations of the claims be found within a single prior art reference. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991). Every element of the claimed invention must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). “The *identical* invention must be shown in as complete detail as is contained in the patent claim.” MPEP §2131 (7th Ed. 1998) (citing *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Furthermore, functional language, preambles, and language in “whereby,” “thereby,” and “adapted to” clauses cannot be disregarded. *Pac-Tec, Inc. v. Amerace Corp.*, 14 USPQ2d 1871 (Fed. Cir. 1990).

“It is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office.” *Ex parte Skinner*, 2 USPQ2d 1788, 1788-1789 (Bd. Pat. Int. 1986) (holding that examiner failed to establish *prima facie* case of anticipation). The examiner has “the burden of proof . . . to produce the factual basis for its rejection of an application under sections 102 or 103.” *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (quoting *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). Only if that burden is met, does the burden of going forward shift to the appellant.

B. Teare Fails to Disclose Elements Recited in Claims Rejected Under 35

U.S.C. §102

1. Claim 11

Teare cannot anticipate (or render obvious) independent claims 5 and 15 because Teare neither discloses (nor even suggests) limitations explicitly recited in independent claims 5 and 15. Teare cannot anticipate (or render obvious) independent claim 11 because Teare neither discloses (nor even suggests) limitations recited in independent claim 11. Claim 11 recites “an agent for monitoring communications between machines of the computer network and the computer system for communications relevant to a command object of the metadata registry, the agent being configured to modify the command object by adding thereto network address information of machines of the computer network that should participate in a communication affecting the metadata registry to maintain coherency of the metadata registry.” The Action asserts that Teare discloses these limitations, and generally cites column 8, lines 37-53; column 19, lines 12-26, and 40-47; column 20, lines 21-27 and column 26, first paragraph to support the rejection. Applicants disagree. The cited text reads as follows:

Defining metadata for a network resource, associating the metadata with a network resource, and storing a copy of the metadata on a server that contains the network resource in this manner offers significant advantages. For example, maintenance of the metadata is convenient. Since a copy of the metadata is stored locally on the server that contains the network resource, the metadata can be updated at any time without contacting a central service. As described further herein, a metadata crawler mechanism periodically visits the server to monitor changes in the metadata. If a Name File 64 has changed, after validation, the changes are automatically propagated to the database and the index.

The Index 30 comprises an Index Builder 32 and Index Files 34. The Index Builder 32 is a software program or process that operates in two modes. In the first mode, a Reconstructor process of the Index Builder 32 periodically polls the database 12, discovers changes to the database, and indexes the changed real name records in the Index Files 34. In a second mode, the Index Builder 32 updates the Index Files 34 in real time, based upon a queue of requests to update the indexes. FIG. 4 is a block diagram of a preferred embodiment of the Index Builder 32. Computers labeled GO Machines 100, 102, 104 each run an instance of the Index Builder 32. Each GO Machine 100, 102, 104 is associated with a network interface process M1, M2, Mn of a Queue Agent 92a. The Queue Agent 92a is coupled to a network 106, such as a local area network, and receives requests to build index entries from the Librarian 20. The Queue Agent 92a propagates a copy of each request to one of the network

interfaces M1, M2, Mn, which forwards the request to its associated GO Machine 100, 102, or 104. This architecture is highly responsive to external queries, and is fault-tolerant.

Generally, the Resolver 40 functions as a runtime query interface to the metadata that is stored in the Registry 10. The Resolver 40 functions to receive real name requests from services 42, 44, 46, query the index 30 to identify network addresses corresponding to the real name requests, and respond to the services with the network addresses. The Resolver 40 is structured to respond rapidly to query operations and to service millions of requests per day. To maximize response time and ensure scalability, the Resolver 40 does not directly access the database 12 of the Registry 10 in responding to queries. Instead, the Resolver communicates with the Index 34 that is stored in fast main memory.

An application program running on the Web application server 60a communicates with the Resolver 40 through the Internet 50 over paths 40a, 40b using CGI scripts to generate HTTP requests and responses. The Web application server 60a uses calls to functions provided by the API of the Resolver 40 to communicate along paths 40a, 40b. Using this structure, the Web application server 60a issues requests containing queries to the Resolver 40. In response, the Resolver 40 evaluates the query, queries the Index 30, and creates a set of metadata for all Index entries reflecting Web pages that match the query. The set of metadata is packaged as an XML file and delivered to the Web application server 60a by the Resolver 40. The Web application server 60a has an XML parser that can parse the XML code in the XML file. Based on the parsed XML code, the Web application server 60a creates one or more HTML documents and delivers the HTML documents to the client 70. The client 70 displays the HTML documents to the end user.

Contrary to the assertion in the Action, nothing in this text discloses (nor even suggests) an agent for monitoring communications between machines of the computer network and the computer system for communications relevant to a command object of the metadata registry, much less an arrangement in which the agent is configured to modify the command object by adding thereto network address information of machines of the computer network that should participate in a communication affecting the metadata registry to maintain coherency of the metadata registry, as recited in claim 11.

Rejections Under 35 U.S.C. §103

Applicant traverses the rejections of claims 16-19. Initially, Applicant contends that the Action fails to establish a *prima facie* case of obviousness because the Action fails to make the necessary factual findings required under *Teleflex Inc. v. KSR Int'l, Co.* 550 U.S. ___, 82 USPQ 2d 1385 (2007), as interpreted by the Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*, published October 10, 2007. For example, the Action lacks any factual findings with regard to on the level of ordinary skill in the art.

Further, the Action includes substantive errors with respect to the status of the prior art. In particular, the outstanding rejections under 35 U.S.C. §103 are improper as a matter of law because there is no evidence of record to support the assertion that Raciborski is available as prior art against this application. The present application has a priority date of June 8, 2000. Raciborski was filed March 11, 2005 and is a continuation of 09/664,148 filed September 8, 2000. Thus, the Raciborski application itself is not available as prior art against this application.

The Office Action appears to rely on Raciborski's priority claim to provisional application Serial No. 60/208,007 filed June 1, 2000 to support the rejection. In order to support this rejection, there needs to be an evidentiary showing on the record that the provisional application fully supports the claims of the application as required by 35 USC 112 (See MPEP 706.02.V). There is no such showing on the record. Therefore, the rejections are improper as a matter of law and should be withdrawn.

CONCLUSIONS

The cited reference fails to disclose or suggest limitations of appellants' claims. Therefore, the cited cannot be used to establish the required *prima-facie* case of anticipation under 35 U.S.C. §102. Further, the rejections under 35 U.S.C. §103 are improper as a matter of law. Accordingly, Appellants urge the Board to reverse the examiner's rejections of the pending claims.

Respectfully submitted,

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Date: December 19, 2007

Claims Appendix

Claims 1-10 (Canceled).

11. (Original) A computer system for operation in a network, the system comprising a storage system, a network interface, and a processor; the system containing a local copy of a portion of a distributed metadata registry, and an agent for monitoring communications between machines of the computer network and the computer system for communications relevant to a command object of the metadata registry, the agent being configured to modify the command object by adding thereto network address information of machines of the computer network that should participate in a communication affecting the metadata registry to maintain coherency of the metadata registry.

12. (Original) The computer system of claim 11, wherein the command object further comprises a quality of service object comprising a desired capacity, latency, and bandwidth, wherein the computer system comprises an allocator that selects a resource of the storage system according to criteria comprising the desired capacity, latency, and bandwidth of the quality of service object and available resource information of the metadata registry.

13. (Previously Presented) The computer system of claim 11, wherein the metadata registry comprises resource information including capacity and latency information for at least two devices to which the computer system is coupled

14. (Previously Presented) The computer system of claim 11, wherein the command object comprises a quality of service object including a desired capacity, latency, and bandwidth.

15. (Previously Presented) The computer system of claim 11, wherein a resource allocator uses at least one of information in the quality of service object and resource information in the metadata registry to select a destination information.

16. (Previously Presented) The computer system of claim 11, wherein The metadata registry comprises network topology information, and the quality of service object comprises desired network hop information.

17. (Previously Presented) The computer system of claim 16, wherein the resource allocator uses the network topology information and the desired network hop information to select a resource.

18. (Previously Presented) The computer system of claim 11, wherein the metadata registry comprises network load information.

19. (Previously Presented) The computer system of claim 18, wherein the resource allocator uses network load information to select a resource.

20. (Previously Presented) The computer system of claim 11, wherein the metadata registry comprises information about processing resources of the network, and wherein the quality of service object comprises desired processing resources.

21. (Previously Presented) The computer system of claim 11, wherein the allocate or uses at least one of the information about processing resources of the network and the desired processing resources to select a resource.

Claims 22-29 (Canceled)

Evidence Appendix

None

Related Proceedings Appendix

None